



## CITY OF PORTLAND, OREGON



### Bureau of Police

Ted Wheeler, Mayor

Danielle M. Outlaw, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000

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### MEMORANDUM (CONFIDENTIAL)

January 12, 2018

TO: Sergeant Gregg Lewis, #22515, PRNR #199009  
Personnel Division

SUBJECT: Discipline: Termination  
IA Case 2017-B-0008

You are hereby notified that your conduct, while employed with the Portland Police Bureau, has not met standards acceptable to the Bureau. The charges are violations of the following Police Bureau directives and City Human Resources Administrative Rule (in relevant parts):

#### Directive 344.05 – Biased-Based Policing/Profiling Prohibited

1. The Portland Police Bureau is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair and equitable manner. The intent of this Directive is to respect individual rights, build relationships, and increase Police Bureau legitimacy.
2. The Police Bureau is further committed to partnering with the criminal justice system to develop unbiased intergovernmental procedures and joining with community service providers to rehabilitate offenders through reconciliation with victims and the community at large, so as to facilitate trustworthy systems, productive lives, and a cost-effective society over arrest and incarceration.
3. It is the responsibility of the Police Bureau to administer a comprehensive training program that will provide for the professional growth and continued development of its members. Curriculum regarding legal and equity concepts and skill sets will be incorporated into training and reflect the Bureau's commitment to equity in policy and practice.
4. Police Bureau members are prohibited from taking or not taking any police-action motivated by bias or profiling.
5. Characteristics of a protected classification may be taken into account when a member is acting on a suspect description or information related to an identified or suspected violation of a provision of law. Members must be able to articulate specific facts, circumstances or conclusions that support reasonable suspicion or probable cause for any stop, search, or seizure.
6. It is the responsibility of all Police Bureau members to proactively ensure compliance with this Directive. Any member who becomes aware of conduct that could constitute bias based policing shall take immediate action to stop or prevent the conduct and shall immediately report the conduct to his or her supervisor.

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7. Managers and supervisors will reinforce the value of this directive and not wait for events to occur. Any supervisor or manager who is aware of bias based policing and condones it by action or inaction will be subject to disciplinary action.

Protected classifications include the following:

- Race or color,
- National origin or ethnicity,
- Citizenship, immigrant or refugee status,
- Religion,
- Gender, gender identity, or gender expression,
- Age,
- Marital or familial status,
- Sexual orientation,
- Mental or physical disability,
- Mental illness,
- Economic status,
- Political ideology or affiliation,
- Veteran status,
- Language,
- Housing status (having or not having fixed residence, public assistance, use of shelter, homelessness (houselessness)).

#### **Directive 315.00 – Laws, Rules, and Orders**

Members are required to conform, on or off duty, to all applicable laws, rules, and orders. Members shall not commit any act or fail to perform any act constituting a violation of any applicable laws, rules, and orders, whether stated in these directives or elsewhere.

#### **Directive 310.00 – Conduct, Professional**

Police Bureau members, whether on duty or off duty, shall be governed by the reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit upon the Police Bureau or the City of Portland.

#### **Human Resources Administrative Rule (HRAR) 2.02 – Prohibition Against Workplace Harassment, Discrimination and Retaliation**

It is the City's policy to prohibit workplace harassment, discrimination and retaliation on the basis of protected status. Protected status includes race, religion, gender, marital status, familial status, national origin, age, mental or physical disability (as defined by the Americans with Disabilities Act and state law), sexual orientation, gender identity, source of income, protected veterans' status or other protected status under applicable law.

Workplace harassment, discrimination, and retaliation manifests in the workplace in two primary ways:

1. In forms of harassment, discrimination, and retaliation that violate state and federal laws; and
2. In forms of inappropriate conduct that may not violate law, but which violate this City rule because the conduct is not conducive to creating a respectful and professional work environment for employees.

Discrimination: Unequal or different treatment of an individual in any personnel action on the basis of protected status.

Harassment: Inappropriate verbal or physical conduct, which may include conduct that is derogatory or shows hostility towards an individual, related to the individual's protected status. The intent or consent of the persons engaging in the inappropriate conduct does not matter.

#### **Examples of Prohibited, Inappropriate Conduct**

##### **Verbal or Physical Conduct**

- I. Use of epithets, innuendos, names, comments, foul language or slurs because of an individual's protected status.

#### **Manager/Supervisor Expectations**

Managers and supervisors shall enforce this rule and maintain a productive, respectful, and professional workplace. Managers and supervisors must take immediate action to stop and prevent discrimination, harassment, or retaliation where they know or have reason to know that it is occurring. Tacit approval of harassment, discrimination, other inappropriate conduct, and/or retaliation by, for example, laughing and treating a situation as a joke, failing to take action or advising an employee not to complain, is prohibited.

Managers and supervisors are responsible for ensuring that notes, comments, posters and other materials on walls, bulletin boards or elsewhere in the workplace, that are derogatory or show hostility toward an individual or group because of protected status are removed.

Managers and supervisors are expected to educate and remind employees about the impropriety of these items as well as the inappropriateness of jokes, slurs, or other negative verbal comments that violate this rule. Managers and supervisors are *also* responsible for educating employees that the use of City owned equipment, including but not limited to vehicles and electronic devices such as computers, telephones, photocopiers, or faxes for any of these purposes is also prohibited.

Under City of Portland Human Resources Administrative Rule 5.01 (8), a violation of federal or state law, or of the City Charter, ordinances or any City rules or regulations, including Bureau-specific policies, is cause for disciplinary action.

## BACKGROUND

You have been employed with the Portland Police Bureau since April 25, 1991. You retired from the Police Bureau at the rank of Police Sergeant on November 1, 2016, and you were rehired at the rank of Police Sergeant on December 1, 2016, under the Bureau's Retire-Rehire program.

Your history of corrective actions and discipline during your career with the Police Bureau includes the following:

- You received a Letter of Reprimand on July 31, 2009 for violating Directive 315.30 – Unsatisfactory Performance, related to a preventable vehicular collision (CRB 2009068).
- You received Command Counseling on October 6, 2006 related to a preventable vehicular collision (CRB 2007-073).

## FACTS SUPPORTING IMPOSED DISCIPLINARY ACTION

You were conducting roll call on February 12, 2017 at approximately 4:00 p.m. when you made several comments that your coworkers deemed inappropriate. At the time you made the comments, you were providing instruction to your subordinates on how to handle civil holds for public intoxication. In the context of discussing how to handle different types of suspects, including homeless individuals, you made comments along the lines of: "If you come across a black person, just shoot them." There were approximately 16 officers and three sergeants present when you made the inappropriate comments.

On February 13, 2017, at approximately 1:30 a.m. [REDACTED] phoned [REDACTED] and requested a meeting. [REDACTED] met with [REDACTED] and [REDACTED] in the lieutenant's office in Central Precinct. All three explained to [REDACTED] that they were uncomfortable with the comments you made during the C-Shift rollicall, relayed that several of the sergeants and officers present for the rollicall had discussed what occurred, and felt obligated to report the incident to command staff.

Written notifications of what had occurred were submitted by Captain Jeffrey Bell with the Professional Standards Division. Excerpts from the notifications are as follows:

*On Sunday February 12, 2107 at 1600 approximately 1600 hours I was seated in the roll call room at Central Precinct while Sgt. Greg Lewis was running C Shift roll call, reading fliers and speaking to a group of 15-20 officers. A discussion between Sgt. Lewis and a few officers about the legality of placing someone into custody for public intoxication on a premise open to the public developed. To the best of my recollection, sometime during that conversation Sgt. Lewis told the entire group of officers to, "go out and shoot black people." I remember hearing some nervous laughter from some in the room and one officer exclaim, "oh my god!" Sgt. Lewis laughed, threw his hands up in the air and said, "Fuck it. What do I care?"*

(Memorandum addressed to Captain Jeffrey Bell from [REDACTED] February 13, 2017)

*Sergeant Gregg Lewis #22515 gave roll call. During roll call we had a conversation about whether or not police could legally detox subjects from parking structures. Sergeant Lewis told officers to "be smart" about who they detoxed from inside the parking structures. Sergeant Lewis stated, "If you come across a guy in a suit and tie that came downtown and had a little too much to drink ....he's probably not the guy you want to detox straight out of the garage. He will most likely sue you. If it's a homeless guy, you will probably be safe. I doubt he's going to sue you."*

*At this time an Officer mentioned he had read an Oregonian article about the [REDACTED] shooting. The Officer stated he had read the comments section of the article and was dismayed because a citizen had written, "PPB kills black people, but only injures white people". Officers began talking amongst themselves about this statement and then I heard Sergeant Lewis state, "Well, let's just go out and kill all the black people".*

*I looked around the room to gauge the affect this statement had on the officers. The officers appeared shocked and astonished. There was some uncomfortable laughter throughout the room, but most officers were quiet. This brought rollcall to an end.*

(Memorandum addressed to Captain Jeffrey Bell from [REDACTED] February 17, 2017)

*To the best of my recollection, I was facilitating a discussion concerning an Officer's authority to detox a citizen who is in a private parking garage. Sergeant Greg Lewis started discussing different types of groups who may be in the parking structure. Responding to another Officer who was concerned we might be targeting certain groups of citizens, Sergeant Greg Lewis said "if they are black, just shoot them."*

(Memorandum addressed to Captain Jeffrey M Bell from [REDACTED]  
February 17, 2017)

The Professional Standard Division's Internal Affairs Unit and the Bureau of Human Resources conducted an investigation into the incident.

Violation of Directive 344.05 – Biased Based Policing/Profiling Prohibited: As a supervisor, you failed to reinforce the values of Directive 344.05 – Biased Based Policing/Profiling Prohibited.

Violation of Directives 344.05 – Biased Based Policing/Profiling Prohibited, and 315.00 – Laws, Rules, and Orders: You suggested enforcement action against citizens based on protected classifications.

Violation of Directive 310.00 – Conduct, Professional: You acted in a manner tending to bring reproach or discredit upon the Portland Police Bureau when you made disparaging comments against citizens of a protected class in roll call.

You were interviewed by Internal Affairs Investigator [REDACTED] on March 16, 2017.



You told Investigator [REDACTED] that you would not make police decisions solely on how a person was dressed, their housing status, or the color of their skin. You remembered participating in a group discussion about when and from where you could detox someone. You remembered saying if someone is wearing a suit or tie then you could put that person in a cab while a transient would not have that option (IA Interview, lines 248-250).

When you were presented with other employees' recollections which indicated they thought you were directing them to treat the homeless differently, you responded:

*I have a habit of sometimes being a little sarcastic, saying things sarcastically, and they might have taken something I said or interpreted something I said differently than what my intention was, but I can't specifically say why one person heard something different than another.*

(IA Interview, lines 274-277)

You were asked if you made a comment about black people, and you responded:

*And for the - the couple of days prior to that, we had been talking about some statements that were in the media regarding officer-involved shootings and when we shoot a person of color, we kill them, and then when we shoot a person - a white person, a Caucasian person, we only wound them. So there had been these ridiculous statements in the media about the decisions we make when we shoot people. So these conversations had gone on right before roll call in the locker room, there had been conversations about that particular topic. So, as we were just getting finished, I remember saying, and I thought it was kind of humorous, in light of these stupid conversations in the media, so, you know, unless it's a black guy, then we just shoot them.*

(Interview, lines 304-311)

You admitted you made disparaging remarks against a person of a protected class and admitted your mistake. You said:

*Well, again, the conversation about if it was a black guy, we would just shoot them, is inappropriate and, as a supervisor, I should have been aware of that and thought a little more plainly about what it is I was saying and the message I was delivering and how it was received.*

(IA Interview, lines 459-461)

*Well, I just, in looking at these things, I understand the 2.02 and regardless of my intent what the - the message, you know, and how that's perceived, how that could be a violation of this, but this - having had time to look at this, I understand that somebody could take offense to this, but I was just trying to highlight this ridiculous stuff that was in the media, bring people back down just to ground, the officers, you know, I believe a large portion of the folks in that*

*roll call gathered that this was a satirical comment on media, but it just kind of hurts me that it gets painted in racial overtones, because there was never any intent to make it that. So, yeah, I'm sorry, I just was going to try to get that out and (indecipherable). So that was all, I just wanted to throw that out there.*

(1A Interview, lines 559-566)

You remembered talking to the officers about using their best judgment when detoxing individuals, but you didn't believe you directed them to police based upon economic status.

You admitted you made the statement about "shooting black people" as an attempt at humor. Directive 344.05 states, in part: "The Portland Police Bureau is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair and equitable manner. The intent of this Directive is to respect individual rights, build relationships, and increase Police Bureau legitimacy."

Your comments during roll call disrespected individual rights and were suggestive of biased based policing and discriminatory law enforcement practices and shocked your coworkers. Your remarks undermined the Police Bureau's community relationships and our legitimacy, and brought reproach and harm upon our organization.

Violation of Bureau of Human Resources Administrative Rule 2.02 - Prohibition against Workplace Harassment, Discrimination and Retaliation

The Bureau of Human Resources (BHR) conducted its own investigation into the alleged statements:

Allegation:

On February 12, 2017, Sergeant Gregg Lewis was in the workplace and serving as the assigned supervisor conducting roll call for shift C at Central Precinct when he made inappropriate statements to staff suggesting ways to approach a citizen when responding to them being intoxicated in the downtown Parking Garages. The alleged statements from Lewis were: "If you come across a guy in a suit and tie that come downtown and had a little too much to drink he's probably not the guy you want to detox straight out of the garage. He will most likely sue you. If it's a homeless guy, you will probably be safe. I doubt he's going to sue you; unless it is a black guy, then we just shoot them". These statements were heard by members of the C-Shift during the roll call.

(Excerpt from Report of Investigation, Findings and Conclusions, Complaint of 2.02 violations BHR Case No. 17-0004; PPB 1A Case No. 2017-B-0008, May 19, 2017)

In their report, BHR noted that nineteen sworn employees who were present at the roll call on February 12, 2017, were interviewed from February 22-28, 2017. [REDACTED] and [REDACTED] reported hearing no inappropriate statements made by you during roll call on February 12, 2017.

[REDACTED] reported vaguely hearing you make references to black people, transients, and/or shooting during roll call on February 12, 2017, however, these officers also reported being distracted and not having a clear recollection as to what was stated. The following

sergeants and officers stated that they heard you make the following statements during roll call on February 12, 2017:

- [REDACTED] reported hearing you say: "If you find a homeless black person, make sure you shoot him and kill him" [REDACTED] Transcript, lines 137-138).
- [REDACTED] reported hearing you say: "I guess if you're black, you get shot, and if you're white you don't" [REDACTED] Transcript, line 156).
- [REDACTED] reported hearing you say: "If it's a black transient we can just shoot them" [REDACTED] Transcript, line 140).
- [REDACTED] reported hearing you say: "If they're homeless, we go and detox them, whatever, and if they're black you just kill them" [REDACTED] Transcript, lines 156-157).
- [REDACTED] reported hearing you say: "Suspect is black and they, either they or shoot them" [REDACTED] Transcript, line 144).
- [REDACTED] reported hearing you say: "If they're black just shoot them" [REDACTED] Transcript, line 178).
- [REDACTED] reported hearing you say: "I guess we just have to go out and shoot a black homeless person" [REDACTED] Transcript, lines 142-143).
- [REDACTED] reported hearing you say: "If they're black and homeless shoot them or kill them" [REDACTED] Transcript, line 170).
- [REDACTED] reported hearing you say: "Go out and shoot black people" [REDACTED] Transcript, line 132).
- [REDACTED] reported hearing you say: "if you come across a guy in a suit and tie that came downtown and had a little too much to drink, he's probably not the guy you want to detox here down at the garage. He will most likely sue you. If it's a homeless guy, you'll probably be safe. I doubt he's going to sue you" [REDACTED] Transcript, page 4, lines 164-167); "well let's just go out and kill all the black people" [REDACTED] Transcript, line 257).
- [REDACTED] reported hearing you say: "If they're black, just shoot them" [REDACTED] Transcript, line 178).

You initially stated that you made the above statements right before roll call in the locker room. You stated later you believed a large portion of the folks in that roll call "gathered" that your remark was a satirical comment on media. You stated: "[I]t's inappropriate for a supervisor to make a comment such as that at roll call" (IA Interview, March 16, 2017, line 418). You also stated:

*Well, again, the conversation about if it was a black guy, we would just shoot them, is inappropriate and, as a supervisor, I should have been aware of that and thought a little more plainly about what it is I was saying and the message I was delivering and how it was received.*

(IA Interview, lines 459-461)

You were asked if you felt your comments, standing on their own, would be considered by many in our society to be a comment with racial overtones. You replied: "Yes, as I'm pretty sure I mentioned earlier" (IA Interview, line 544). You had stated earlier:



*...I can understand how people would think that there would be a strange motivation or that would be out of context to hear that. But, again, it was not motivated by any racial thing, it was just trying to kind of, in my sarcastic tone, highlight this silly stuff that was in the media.*

(IA Interview, lines 366-368)

Investigator [REDACTED] asked you if your intention was to make a sarcastic comment. You replied:

*Yes, and just to kind of inject what I thought was sort of an ironic humor to the stuff in the media and just let people see that, and just to kind of be able to brush that silliness off and go out and do their job and not worry about the BS stuff that they see in the media.*

(IA Interview, lines 378-380)

Investigator [REDACTED] asked you whether this statement went against your training. You replied:

*I think in a communication sense it does, but, again, I had no intention. There was not - that was not the message I was trying to deliver. So in the strictest sense, yes, it would probably be in violation of that, but, again, not what I intended to deliver in the message.*

(IA Interview, lines 397-399)

You were asked to read the definitions of harassment on page two of HRAR 2.02. You were then asked if your comment could have been a violation of 2.02. You replied: "Based on that sentence, yes" (Lewis TR, page 11, line 506). You were asked to read the part of HRAR 2.02 that speaks to manager/supervisor responsibility - specifically the section stating, "Managers and supervisors shall enforce this rule and maintain a productive, respectful and professional workplace." You were asked if your comment complied with the spirit of this section of the rule, to which you replied: "No" (IA Interview, line 514).

You stated in your closing remarks:

*...I understand the 2.02 and regardless of my intent ... I understand that somebody could take offense to this, but I was just trying to highlight this ridiculous stuff that was in the media, bring people back down just to ground, the officers, you know, I believe a large portion of the folks in that roll call gathered that this was a satirical comment on media, but it just kind of hurts me that it gets painted in racial overtones, because there was never any intent to make it that. So, yeah, I'm sorry, I just was going to try to get that out and (indcipherable). So that was all, I just wanted to throw that out there.*

IA Interview, lines 559-566)

BHR, as a result of its investigation, substantiated the complaint that you made an inappropriate statement that was derogatory towards individuals in a protected class (African Americans) when you commented to officers at roll call that, when approaching a potential detox subject, words to the effect of, "unless it's a black guy, then we just shoot them". You admitted making this statement in a

workplace setting but you continued to assert, throughout your interview, it was not your intent to be offensive or make a comment with racial overtones. As provided in HRAR 2.02, the intent or consent of the persons engaging in the inappropriate conduct does not matter. The statement you made meets the definition of harassment under HRAR 2.02 because it is inappropriate verbal conduct that shows hostility towards an individual, related to the individual's protected status.

BHR concluded your statements violated the Manager/Supervisor Expectations as outlined in HRAR 2.02:

Managers and supervisors shall enforce this rule and maintain a productive, respectful and professional workplace. Managers and supervisors are responsible for ensuring that notes, comments, posters and other materials on walls, bulletin boards or elsewhere in the workplace, that are derogatory or show hostility toward an individual or group because of protected status are removed. Managers and supervisors are expected to educate and remind employees about the impropriety of these items as well as the inappropriateness of jokes, slurs, or other negative verbal comments that violate this rule.

BHR found your statement also violated HRAR 2.02 in that they implied tacit approval to harass, discriminate, use violence and/or engage in other forms of inappropriate conduct towards members of a protected class.

BHR found your statement met the definition of discrimination under HRAR 2.02 because, in effect, you were instructing officers to apply unequal or different treatment of an individual on the basis of their protected status.

BHR also found your statement violated HRAR 2.02 because managers and supervisors are required to remove from the workplace comments that are derogatory or show hostility towards an individual or group because of protected status and are required to educate and remind employees about the impropriety and inappropriateness of jokes, slurs or other negative verbal comments that violate HRAR 2.02.

BHR concluded the complaint against you substantiated: You violated HRAR 2.02 when, on February 12, 2017, while in the workplace and serving as the acting supervisor, you made a discriminatory, derogatory and harassing inappropriate statement about an individual or group of individuals on the basis of their protected status.

You said you made the statement about shooting black people as an attempt at humor. Regardless of your intent, you conducted yourself in an unprofessional manner. Your comments violated Directive 344.05 – Bias Based Policing/Profiling Prohibited and HRAR 2.02 - Prohibition against Workplace Harassment, Discrimination and Retaliation. Your comments shocked your co-workers, caused harm and brought discredit to the organization, and undermined our efforts at building relationships within the community.

## SUMMARY

The Police Review Board met on August 2, 2017, and recommended the conclusion that you violated Directive 344.05 – Biased-Based Policing/Profiling Prohibited, 315.00 – Laws, Rules, and Orders, 310.00 – Conduct, Professional. Three board members believed your actions could have a significant adverse impact on officer or public safety or to the professionalism of the Portland Police Bureau. Two board members believed your misconduct involved a willful disregard of Portland Police Bureau values and demonstrative a serious lack of integrity. One board member went so far as to describe your actions as egregious and abhorrent. Board members also expressed concern that you engaged in such misconduct while serving in a leadership position as a police sergeant. Assistant Chief Davis agreed with the Police Review Board and also found you violated HRAR 2.02.

You were provided with the opportunity to meet with me and present any information you wanted me to consider prior to making any final disciplinary decision. We met on December 6, 2017.

During our meeting, you explained the events of the day on February 12, 2017. You attributed the topic of conversation to frustration with how the media portrays police shootings. You described a conversation in the locker room as *"half joking kinda weird conversation in the locker room"* that preceded your roll call comment. In providing context around detox actions, you explained that your discussion during roll call was about being articulate in the actions that you take and how you write a report. You described as *"flippant"* the remark you made while *"wrapping up"* roll call, that you communicated to me as, *"[O]f course, unless it's a black guy, and then we just shoot them."* Your remarks can also be described as insensitive and ignorant.

You explained the remark was a throwback to the conversation you had ten minutes earlier in the locker room, you didn't know where it came from, that you thought *"maybe it was sarcastic"*, and that it didn't go over very well. You adamantly denied having made the statement, *"Well let's just go out and kill all the black people."* You said it is difficult *"that this is colored as a racial thing"*.

I have carefully considered the information you provided. While I recognize you dispute the exact words individuals recall you using, the general nature of your comment about "shooting black people" is not in dispute. This comment was highly derogatory towards a class of individuals, was suggestive of biased based policing and was wholly inappropriate. Your remarks call into question our agency's legitimacy, credibility and integrity, and our commitment to protect the community we serve in a compassionate, equitable and unbiased manner.


An aggravating factor is your rank as a supervisor. As a tenured police sergeant, you are expected to set an example and provide leadership. Your actions and attitudes influence others, particularly younger officers who look to you for guidance and direction. You do not appear to acknowledge and accept responsibility for the unprofessional and unacceptable manner in which you communicated with other sergeants and officers at the roll call. Your remarks shocked and left a negative impression on the officers and sergeants who were present. It does not appear you fully understand the impact of your statements and the implication that you were encouraging or condoning mistreatment of a group or class of individuals based on their race.

Given the egregiousness of your behavior, I have determined that termination of your employment is the appropriate level of discipline in this matter.


A copy of this letter will be placed in your personnel file.

Under the provisions of the current labor agreement, you are entitled to file a grievance through your union, if you believe this action was not for just cause.

You are not being disciplined for political or religious reasons, but in good faith, and for the purpose of improving public service.

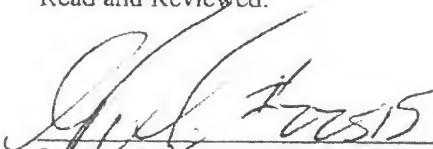
  
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DANIELLE M. OUTLAW  
Chief of Police

JAN. 12, 2018  
Date

  
\_\_\_\_\_  
TED WHEELER  
Mayor, Commissioner In Charge

1/18/18  
Date

Read and Reviewed:

  
\_\_\_\_\_  
Sergeant GREGG LEWIS #22515 #DPSST  
I certify that I have read and received a copy of this notice.

020218  
Date/Time

c: President Daryl Turner – PPA  
Director Anna Kanwit – BHR  
Jerrell Gaddis – BHR  
Police Bureau Personnel File (201)  
Discipline File

DMO/ctp

**RECORD RETENTION:** 10 years after separation **AUTHORITY:** OAR 165-200-0090(7)